Ordronaux

HISTORY AND PHILOSOPHY

OF

MEDICAL JURISPRUDENCE.

BY JOHN ORDRONAUX,

PROFESSOR OF MEDICAL JURISPRUDENCE IN COLUMBIA COLLEGE, NEW YORK.

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In approaching the philosophy of any science, the mind is at first bewildered by the multitudinous relations under which it presents itself. Aside from abstract principles, which are few and easily recognized, the variety of their application, the subtle forms under which they exhibit themselves, and the gradual blending of their operations into each other, render their practical investigation always a difficult subject to master. Hence it is that we are driven to the common ground of accepted definition for the που στω whence to originate all study and successful investigation. This is particularly the case in the physical sciences, where a natural correlation knits them together in a chain of mutual dependencies. But when, overpowering all these correlations, the law undertakes to apply her canons to the admeasurement of civil wrongs growing out of the operation of physical agencies, then it is that the subject, by additional complication, becomes difficult of solution. We need at such a time a knowledge not simply of positive, instituted law, but of natural law; a knowledge not of the language of human enactments alone, but of the language of physical agents as they express themselves through pathological signs. Without descending into metaphysical speculations, or losing

* From the Am. Journal of Insanity for October, 1868.

ourselves in the mazes of dogmatic conjecture, it is still necessary that we should begin our inquiry with first principles—the germinal points—of every science. Having done this we can afterwards trace with ease and increasing success, the relations which flow out of them; for no science can be difficult to him who has thoroughly mastered its elements.

It is not proposed, however, to enter into any large or critical discussion of the entire field before us, since that would indeed necessitate a volume of indefinite proportions. Medical jurisprudence as a science, is too comprehensive a department of philosophy to be disposed of in a magazine article. Its boundary lines exceed those even of natural history, since, as a syncretism between natural and human laws, it covers the entire field of both territories. Those who look at it only as the caudal fin to chairs of obstetrics or chemistry in medical colleges, know little of it besides its name. To them it is simply a myth, imported into the curriculum of medical study by way of ornament alone. Yet if we may trust one whose life was chiefly spent in its cultivation, and who may be supposed to have known all that proficiency in it cost him, as it will any one, desiring to follow its myriad avenues of necessitated investigation,—if we may quote the language of the distinguished Fodéré, we shall need advance no better argument, nor could we adduce a stronger one, in behalf of its majestic proportions. Let us listen to the great master, as he utters in his introduction, these striking words: "*Si l' on porte au reste á ce sujet toute l' attention qu' il mérite, l 'on ne pourra qu' être éffrayé de l' immensité des connaissances qu' exige l' exercise légitime de la Médécine Légale;*"—and if we pause but to reflect upon the fact that this neglected science, only tolerated by sufferance, and hardly adopted into the sisterhood of studies in medical schools, nor often granted a separate altar and

an ordained priesthood—that this humble department includes *anatomy, physiology, pathology, therapeutics, surgery, chemistry, botany and hygiene* as its medical phasis; while with a still wider range, and regarding man as living a life of relation and responsibility towards his fellow-beings in society, it enters into the vast chambers of law, there to consider and weigh the testamentary capacity of parties; their mental ability to form contracts of whatever name or nature; the rules regulating survivorship and life assurance; the physical competency underlying the domestic relations, and determining not only the rights of the actually living, but of their posterity; and lastly, criminal responsibility as affected by insanity or intoxication;—if we go no further than these facts, we shall be convinced, at the threshold of any inquiry into its philosophy, that no one can over-estimate or over-state the comprehensiveness of this field of multifarious investigation.

But law and medicine, although uniting in the production of this third science, cannot be said to hold a divided empire over its practice; for law alone is, and must ever be, the supreme arbiter of human actions in society, nor can she surrender her authority over the temporal accountability of mankind without at the same time surrendering her life and her essential prerogatives. The application of medical jurisprudence to the admeasurement of physical facts affecting the civil or criminal responsibility of parties, amounts practically only to this—that medicine furnishes the lights of her experience, and law applies them according to the established rules of her tribunals, and as modified by the equities of each particular case. Thus the aid of medicine is often invoked; she is even at times intrusted with the scales; but law always retains the sword, always retains the right of reviewing the judgement and prescribing the penalty. And this is but just,

since it leaves either science to perform its destined part in the economy of human government: law, as the heavenly appointed governor of man in society; defining what is right and prohibiting what is wrong; protecting the weak and compelling the powerful; scrutinizing the state of the mind, together with the intention, as the foundation of all human responsibility; deliberate and merciful in her judgments, swift and terrible in her punishment: and, on the other hand, medicine, walking like a Good Samaritan with the oil and balsam of philanthropy in her hand; guiding hood-winked justice whenever she explores the dark valleys of bodily or mental infirmity, and striving to mitigate the too rigorous application of legal canons, whenever weakness is mistaken for error, and disease is mistaken for crime.

HISTORY OF MEDICAL JURISPRUDENCE.

Before proceeding to investigate the philosophy of a science of such vast proportions, it may not be amiss to indulge in a brief retrospect of its history. That anything like a perfected system of forensic medicine, whose principles are founded upon the laws of our physical being, should have been completely formed before those fundamental laws were themselves discovered, is not to be believed. To speak of it, therefore, as an established science before the labors of Harvey, Vesalius, or Fallopius had broken the seals of rational anatomy, is to confound the narrow results of ancient observation with the grander explorations of modern times. The human mind, powerful and penetrating as it may be in research; reflective and logical as it may show itself in tracing analogies and elucidating principles, cannot erect systems by its solitary fiat. These are the offspring only of centuries, the accumulated labor of generations, each receiving, transporting, and in its turn transmitting the torch of learning to its suc-

cessor, and thus, little by little, building islands and continents in the great sea of human thought.

Nevertheless, one very important branch of medical jurisprudence was unquestionably recognized and provided for in the legislation of antiquity; and this branch which was founded in that first of governing principles, the law of self-preservation, formed a true system of medical police even among the Israelites and the Hindoos. The frequent lustrations and isolations of the person, enjoined as part of the ceremonial law among those nations, converted a physiological safeguard against contagion into an act of worship, in this wise insuring its daily practice by all classes in the community. And so urgent was the necessity of personal purification deemed among a population proverbially unclean, and in a climate disposing to pestilence, that the Mohammedan was ordered to cleanse himself with sand wherever water was not to be had. From this incorporation of sanitary observances into the religion of the country, it followed that priests became the earliest custodians of public health, and it may be truly said, the earliest medical jurists on record. Their education, which was of the most extensive character possible at that day, included a thorough knowledge of medicine as then understood; and they were well qualified, therefore, to act as a sanitary police. They defined the civil status of the citizen by first defining his religious and ceremonial condition. If pure in body—then might he go at large into the streets of the market places—the temple or the synagogue; and contrariwise if impure, he was at once put under civil disability and isolation. Even at this day, in India, caste, rank, is forfeited by touching articles forbidden in the religious code, and the priest among the Hindoos is still in many senses the acknowledged lawgiver, as in ages past.

These were certainly wise enactments for those days

of little knowledge, and well suited to that population among whom the source of filth has been at all times inbred and irrevocable. They show too that hygiene is the earliest study, as it is the earliest necessity of mankind in society; and in appointing the priesthood to the guardianship of public health, they gave them control over one of the chief sources of public misery—destitution, vice and crime. When we peruse the laws of those nations living, as it were, in the gray dawn of time, and without the elevating advantages of intercommunication with other peoples: working out, with no inherited models of legislation, and no established codes of scientific truth, the great problem of national prosperity—when we see them promulgating laws whose wisdom seems far in advance of the civilization which gave them birth—laws whose outlines we cannot expand, all our multiform and wonderful discoveries only serving to contribute details and formulæ for their better and more economic administration—we cannot doubt that the scholarship of that day, as represented in its legislation, was something more than history has found materials with which to describe it. If the Israelites or the Egyptians could have laws enforced among them regulating marriage and the relations of the sexes—distinguishing between mortal and dangerous wounds in order to affix penalties—and prescribing modes of embalming and interring the dead—thus involving some of the most important questions in the sanitary police of communities, we must surely believe that they fully comprehended the necessities of such regulations to be founded in the laws of our physical being—in a word, that their legislators must have been physicians. And, we need not ask, after reading the ordinances of Lycurgus, or the physical rubrics laid down by Pythagoras and Plato, whether they too had studied the laws of our bodily life.

There is no evidence, however, that any union of the professions of law and medicine in any one science and as a branch of jurisprudence was contemplated by the more cultivated Greeks. Except in questions of medical police, medical men were not often consulted by the tribunals of Greece. In that country the chief concern of legislation was to secure a robust people, capable of bearing arms, and in their prevalent ideas as to the best mode of perfecting the human species, they were led to the barbarous and unscientific practice of destroying delicate, and rearing only strong infants. To perfect this dogma of their political economy, and to provide for the health of cities and camps by assuaging the virulence of epidemic diseases, formed about the whole scope of Greek state medicine. For, aside from the admirable treatise on Air, Water and Locality, left us by the father of medicine—a treatise which still influences the civilized world—no other contribution to the literature of that subject has come down to us. Whatever may have been the limited achievements of those days in forensic medicine, the opinions of Hippocrates and Aristotle upon certain physiological problems relating to the perpetuation of the species, have always carried with them an authoritative influence, not only in the schools, but with legislators, which succeeding ages have hardly extirpated. Many of the principles of the Canon Law, as formerly recognized in the Ecclesiastical Courts of Europe, were undoubtedly founded upon the crude speculations of these authors, and in particular of the Stagirite, whose Organon was the Bible of the schools of philosophy down to the time of Bacon.

But when we pass to Rome, we meet at once the spirit of her truest grandeur in the superior character of her legislation. As early as the reign of good king Numa, a law was enacted which was intended to pro-

tect the life of the heir, by requiring medical assistance in critical cases.* And even before that auspicious day which saw the mighty lawyers of Justinian remodeling the jurisprudence of their country, the law of the Twelve Tables had made provisions of the wisest and most humane character in relation to the civil rights of posterity. The Romans who had imported their laws, as they had their arts from Greece, were almost exclusively guided in their legislation by the dictum of ancient philosophers; hence they very naturally incorporated into their jurisprudence the best models of morality and polity which their age afforded. Masters of the world, they readily subsidized its treasures, whether of art or philosophy, to the aggrandizement of their own glory, and the perpetuation of their own empire. Yet such was the petrified adherence of the age to the canons of the old masters; so much was it the rule to swear by established and mouldy authority—a custom whose practice even in the middle ages and among the schoolmen silenced every objection with the simple *sic magister dixit*—that in the Pandects of Justinian, where various titles† are created referring to crimes, physical deformities and questions of legitimacy, the courts were instructed not to be governed by the evidence of living physicians, (who might be most competent to explain particular points then at issue,) but to form their opinions exclusively *propter auctoritatem doctissimi Hippocratis.* Yet the creation of an *archiater*,‡ or state

* This was the Lex Regia "*De Inferendo Mortuo*," forbidding the burial of a pregnant woman until the fœtus should first have been extracted.—*Digest: Lib.* II., *Tit.* 8.

† These titles are "*De Statu Hominum, De Sicariis et Veneficis; De Inspiciendo Ventre, &c.; De Hermaphroditis; De Impotentia, &c., &c. Instit.: Lib.* 4, *Tit.* 18.

‡ Code Theodos.: 12, 13.

physician, whose public functions corresponded to those of a modern health officer, who was himself court physician, and the acknowledged head of the medical profession, must have imparted to his opinions great weight with the judges, notwithstanding the institutional reverence for Hippocrates. And possibly his influence was not unwisely exercised over some of his royal patients, since we find an occasional relaxation in the rigorous construction of statutes, sanctioned by imperial edicts. If we may credit Tacitus, the bodies of Germanicus and Agricola were medically examined, and in the former slight traces of poison were noticed; but whether the autopsy was undertaken at the command of some tribunal and as forming a part of a judicial inquisition, does not appear.*

In the confusion which followed the irruption of the barbarians and the downfall of the Roman Empire, we lose sight for a while of the workings of municipal regulations. The larger operations of war, conquest, and the foundation of new governments, overshadow all other considerations, and it is not until order once more reigns, and the thoughts of men can be concentrated upon the necessities of a system of jurisprudence, that we may expect to find the tamer studies of philosophy and legislation fixing their attention. In the whirlwind of savage customs which ruled society throughout western Europe during the dark ages, legal medicine could hope for no positive recognition. Its very sources were ignored, and its principles derided as a sacrilegious attempt to invade the secret haunts of nature; and in its stead ordeals by fire, water, or the judicial combat were introduced, as so many direct interrogations of the Deity. But the laws of a country, like its language, are not easily extirpated even by conquest; and it seldom hap-

*Tac. Annal. Lib. 2, 73, and Suetonius in vita *Caligulæ*, § 1.

pens that the civil legislation of a conqueror escapes the infection of local customs and language. For it is always easier to adopt a system of laws than to frame one, and the proud jurisprudence of Rome was of too practical as well as philosophical a character to permit of its easy overthrow by barbarian codes. Hence, the wiser conquerors were not slow in availing themselves of this fountain of justice. They drew largely from it, nor did they ever cease paying that homage to the laws of Rome which they had so emphatically denied to her Empire. It would not be difficult to show that the Roman law had authorized the calling and consultation of physicians before courts in difficult cases, and finding the same rule prevailing in the jurisprudence of the Ostrogoths, in Italy,* and of Charlemagne,† in France, it is easy to conjecture the source whence the rule was derived. This brief sketch may be said to include the whole aspect of legal medicine as presented to us in the laws and legislation of antiquity. That it made but little progress—that it should have been extremely desultory in its application, and should have continued a weak and inferior adjuvant to courts—will be readily understood when we reflect that most of the physical sciences upon which rests its foundations, and whence its true life is drawn, had scarcely risen upon the horizon of human thought. No Harvey had yet shown that blood circulated through the arteries, instead of air. No Vesalius had yet established a rational system of anatomy based upon positive demonstration. No Boërhaave or Van Helmont had yet explored the mine of chemistry,

* Theodoric, their King, delegated the care of justice to *consulars*, *correctors*, and *presidents*, who, says Gibbon, "governed the fifteen regions of Italy according to the principles, and even the *forms* of Roman jurisprudence." Roman Empire, vol. 4, p. 21.

† Capitularies, 116, lib. 7.

through which Priestly and Lavoisier were destined to descend into the very penetralia of matter. Man's nature was still a sealed book, before which *flamen* and augur and oracle stood dumb, and over which law herself ministered with scarcely any knowledge of its contents. Whatever, therefore, may have been her errors, they were, at most, only the reflected errors of her day and generation; nor should those things be imputed to her as crimes which were done under sanction of the highest authority she could summon, and the fullest measure of light she could obtain.

It is generally admitted that the application of medical knowledge to jurisprudence, and the practical recognition of a science of forensic medicine, only commenced about the middle of the sixteenth century. The criminal code of the Germanic Empire, originating with Charles V., and enacted by the Diet held at Ratisbon, in 1532, (*Constitutio Criminalis Carolina*) is the first public recognition and the first legal application of the science which we meet with in modern history. This celebrated code, which still rules the proceedings of German Courts, enacts that physicians *shall* be consulted in all cases where death has been occasioned by violent means, whether criminal or accidental, &c., &c. And one of the first fruits of this new authority to medicine, was her successful encounter with, and overthrow of, many dominant superstitions, which had not only fettered the public mind in those days, but cost, as in the accusations for witchcraft, the lives of thousands of innocent people.* The ordinances of the kings of France, subsequent to the days of Charles V., com-

* "Wierus, a physician of the Netherlands, in a treatise "*De Præstigiis Dæmonum et Incantationibus*, Basle, 1564, combats the horrible prejudice by which those accused of witchcraft were thrown into the flames."—*Hallam*, Lit. of Europe, vol. 1, p. 289.

bined in the form of codes, what had formerly been only customs, a tribute to the wisdom of the German emperor, and an acknowledgment of the wants of their own jurisprudence. In 1606, Henry IV. gave letters patent to his chief surgeon by which he was authorized to appoint two physicians in each town, who in the nature of coroners should investigate and report upon all cases of accidental death. And in 1667, Louis XIV. decreed that in all criminal matters requiring reports, courts should be assisted by at least one of the physicians named by his chief surgeon. Of such binding obligation were all these ordinances upon courts, that a decree of the Parliament of Paris, in 1662, and of the Parliament of Dijon, in 1650, set aside judgments rendered without the intervention of medical experts.

The foundations of medical jurisprudence being fully established as part of the municipal code of most Continental nations, commentators and compilers of its canons, and the decisions under them, now began to appear in great number. With scarcely an exception, these early writers were physicians; the Italian and German schools equally dividing the honors of authorship. It would be out of place here to attempt to enumerate by name the multifarious treatises upon this science, in its various departments, which have appeared from time to time, and would render a mastery of its bibliography alone a burthensome undertaking. With this department, every medical jurist will of course see the propriety of at least a limited acquaintance, at some time; though it will be sufficient to say in this connection, that the number of its volumes is computed at 12,000,* in order to make every one feel the necessity of a judicious selection from this great lumber-house, if

* Hoffman's Course of Legal Study: vol. 2, p. 701.

he would wish to learn nothing for the mere purpose of unlearning it.

As a branch of instruction, medical jurisprudence is but a new comer in the schools; and as its first teachers were physicians, so its first altars were erected in medical colleges. Inasmuch, also, as its first seed was cherished in the bosom of the old Civil Law, so those countries first received it which had themselves derived the foundations of their jurisprudence from the same source. Haller's lectures on juridical medicine, which were published in 1782, indicate already the establishment of a chair of instruction in Germany, probably the first in Europe. In 1792, the first professorships of the science were created in the colleges of France, and in 1803, in the University of Edinburgh. And while no special instruction on this subject appears to have been given in the schools of England before the year 1820, it had already been made the subject of lectures in the United States as early as 1804. So far as can now be ascertained, the first lectures on Medical Jurisprudence in this country were delivered in the city of New York, and to the students of Columbia College, in the fall of 1804, by Dr. James S. Stringham, then Professor of Chemistry. This chair he filled until his death in 1817, when he was succeeded by the late distinguished Dr. John W. Francis, who occupied it until the year 1826. And although Dr. Francis' name does not appear as author of any treatise on medical jurisprudence, I believe I may truly say that he has been the most voluminous contributor of personal observations in this country, to that science, and has received less credit at the hands of those whose authorship he has assisted, than is generally known. It is a pleasure to be able to pay this deserved tribute to the memory of one who was himself not only the best of friends and patrons to

the humanities in our midst—the true Mæcenas of science and art in her metropolis, but did so much also to rescue the memory of every deserving brother from the effacing hand of time.

While Dr. Stringham was delivering his lectures on medical jurisprudence in Columbia College, Dr. Charles Caldwell delivered a course on the same subject in Philadelphia, during the winter of 1812–13; and in 1815, Dr. Beck was called to fill a similar chair in the Western Medical College. Since that time, and, advanced into prominence by Dr. Beck's encyclopædic work upon the subject, forensic medicine has been considered as part of a regular course of medical study, and most schools have accordingly introduced it into their scheme of lectures, though generally as a subordinate branch, and appendant to some other chair. At last, also, the law schools have recognized it in many instances, and adopted it as an adjunct science, collateral to, and not in the main line of required studies. Slowly and surely, however, it is working its way to that eminent position which belongs to it in the internal economy of government, for it is truly a part of the *Jus Gentium*—of the *necessary* law of every State, whether in its capacity of medical police, or of forensic medicine.

PHILOSOPHY OF MEDICAL JURISPRUDENCE.

The foregoing sketch of the history of this science prepares us to see that its rootlets are implanted in the foundations of civilization. Wherever civil society exists there is a necessity for this syncretism of law and medicine, which illuminates justice, and gives to legislation itself a higher character of scientific accuracy. The internal government of France, Prussia, or England, as compared with that of Turkey, Morocco, or Persia, in all those relations of life which require protection

for the weak—preservation of the public health—the equitable administration of justice—and the officious distribution of estates—in a word, the expression of a moral power in the State, competent, by scientific illumination, to administer justice according to principles, and not according to forms, so that the spirit rather than the letter shall govern in weighing human rights and human responsibilities—this moral atmosphere can be found only where civilization, aided by revelation, has developed its most consummate fruits.

The philosophy of medical jurisprudence is founded in the necessity of applying the laws of nature in the administration of justice, no less than in the preservation of the public health. In a large range of subjects it is occupied with the consideration of topics that are, strictly speaking, exclusively medical in character.* Upon these the opinion of experts is final and conclusive. With the exception of insanity, physiological or pathological conditions of the human body do not generally occasion irreconcilable differences of opinion between experts. There is always some middle ground upon which they can meet; some acknowledged principle they recognize as fundamental, and about whose application alone they differ. But for the field of psychology, forensic medicine would be simplified into an investigation of physical laws having definite complexions, exhibiting few exceptional or contradictory signs, and amenable to something akin to positive demonstration of correlation between first causes and

*In an article of this kind, designed especially for the columns of a journal of Psychological Medicine, I have felt myself authorized to omit all consideration of such subjects as *rape*, *abortion*, *infanticide*, *poisons*, &c., in order to be able to dwell somewhat largely upon the topic of insanity, as one more germain to the character of the publication in which this sketch appears.

ultimate consequences. No link in such a chain of proof is even necessarily absent, because the efficient causes of material changes must in their very nature be material, and it is a question dependent very much upon experience in observation, whether or not we are able to trace the series of catenated influences which produce any ultimate effect. Some will see it, others will not, and because science imparts pre-vision, those who possess her experience can prognosticate. Without her light added to that of experience, we should hardly be able to push our investigation beyond the differentiation of effects, while causes would remain unobserved.

As we pass, however, from the world of matter to that of mind, we find ourselves very soon in the presence of manifestations for which there are no analogies in the former sphere. The law of proportion seems entirely dethroned. Trivial causes produce gigantic effects, and contrariwise, powerful causes produce wholly inadequate consequences. Is this a reality, or is it only phenomenal to us? Is it a fact without an appreciable manifestation on the one hand, or is it a manifestation subjectively exaggerated and without any postulate and objectively adequate cause? These perplexingly intricate problems in the realm of physio-psychology, have imparted to the science which undertakes to resolve them, a proportionally commanding character. And inasmuch as, in the administration of justice, such problems are frequently arising, to afford texts upon which legal logomachy can exercise itself illimitably, the opportunity for confusion of ideas and illogical conclusions is perhaps greater here than in any other field of human investigation. It is this fact more than any other which has given to questions of insanity such a portentous character before courts. For, if the entire sphere of man's civil or criminal responsibility may be modified by the mental

character revealed through his actions, it follows that as many interpretations as can be put upon those actions, just so many phases of responsibility will there be made out. All human responsibility turning, therefore, upon *mind* in the concrete, and as related to particular actions, the value of a science auxiliary to the administration of justice should be estimated according to the measure of good it can supply in this direction. The law looks to, and in fact employs, forensic medicine as in every sense *amicus curiæ*—a counsellor retained not in the interest of one party, but in that of truth generally; and the philosophy of this science as it has gradually been unfolded, has shown the essentially legal necessities upon which it rests. It is from its association with jurisprudence that it exercises so commanding a sway in the field of contested rights, remedies and responsibilities; and it is in that portion of it where mental unsoundness enters into the question of civil obligation, that we must seek for the reason of those principles which it furnishes to law as an illuminator of its pathway.

Law as a rule of conduct in human society presupposes the existence of rational beings, among whom the consciousness of civil relation exists.* Law therefore pre-supposes reason, and reason implies a mind or intellect in which that function can be performed. In distinguishing man from all other animals by this heavenly gift, God has created within us a system of natural jurisprudence, of which conscience is ruler, and intellect the external minister and instrument. The first offspring of conscience is justice, "that gods and

* Aristot. Polit.: Lib. 1, c. 2. In Homine optimum quid est? Ratio. Hac antecedit Animalia, Deos sequitur. *Ratio ergo perfecta proprium Hominis bonum est.* Cætera illi cum animalibus satisque communia sunt. *Seneca*, Epist. 76; Vid. Cicero de Offic.: lib. 1, c. 4.

men do equally adore," and the idea of justice implies obligation (*suum cuique tribuens*)—obligation in its turn involves responsibility. Therefore law, which is a rule of conduct measuring the responsibility of man towards his fellow-being in society, must, before defining the extent of his obligation, ascertain whether or not any foundation for that obligation or responsibility exists—whether or not the source or fountain of that obligation, the *recta ratio*, continues in its integrity. For it is clear that where there is no mind, there is legally no man; and where there is no man, rational and reflective, there can no law of responsibility apply. Such a being becomes simply an animal endowed with the *vis naturæ*, not the *jus naturæ*.* Whence it follows, that the most important application of medical jurisprudence to the concerns of daily life, is that of admeasuring the intellectuality of man with reference to a determination of his *civil* or *criminal* responsibility before the law. This must be considered its most important application, because it involves the largest number of interests, whether monetary, personal, or reputational. And since *property*, *personal security*, and *reputation* are the foundations upon which all civil government is built, that science cannot be of slight importance, whose practical application looks to a protection of these pillars of social progress and social prosperity. Now as the law considers the assent of the mind and the freedom of the will to be the indispensable prerequisites of every action entailing a perfect or an imperfect obligation, so it requires in every case of doubt, arising from exceptional circumstances, that the will should be proved free from duress, and the mind from disqualifying disorder. To prove the presence and the extent of disorder of the mind in any alleged case of insanity, is the contri-

* Taylor's El. of Civil Law, p. 120.

bution which medicine presents, in the form of skilled testimony, to law; and, upon this testimony, law admeasures the civil or criminal status of the party in whose behalf this interlocutory plea is made. As this is the most intricate, so it is the most debatable problem in the whole science of forensic medicine; for it is in this department in particular that the medical jurist will find his talents most tasked, and his authorities most conflicting. Wherever extremes of mental deprivation, like *idiocy* or *general mania*, occur,

> "Demoniac phrenzy, moping melancholy
> And moon-struck madness,"

there can be no question of the legal irresponsibility of its victims. *Mens peccat, non corpus, et unde consilium abfuit, culpa abest.* Such forms of disease are so patent in their outward manifestations that they silence, at the outset, all doubt and all discussion. It is far otherwise, however, with that numerous train of mental disorders, which, while existing obscurely excite no alarm, until some accidental crisis determines their explosion and their mastery over the entire intellect and the emotions. It is here that courts, losing themselves in the inextricable mazes of conjecture, require the assistance of experts, whose familiar acquaintance with the Protean shades of insanity enables them to weigh and gauge each particular case by a standard of its own. Had mankind been originally grouped into specific classes, each having its own peculiar mental disorders, and no other, we might indeed presume to frame a code of inflexible formulæ, graduated to the necessities of each class.

But nature has created no such arbitrary distinctions as these. She dislikes in fact all intrusive restrictions, all angularity of motion, of thought, and of feel-

ing; and even as in the physical world she delights to move in circles, and parabolas, and hyperbolas, so in the world of mind she gives each individual control over his own intellectual orbit, and allows him to extend or diminish its axes at will.

Were it possible to define insanity, which it is not, so as to bring it within the limits of an uniform symptomatology, we might easily dispense with the lights of medicine and of metaphysics in establishing its existence; but inasmuch as no two minds are alike, either in health or in disease, we are consequently driven to the necessity of inquiring, at the outset, into some of the general and most unvarying phenomena of intellection, in order the better to analyze and classify deviations from the average standard of health, in the operations of the mind.

The science of mental philosophy is so vast and comprehensive, its domain is so boundless, and our charts are so meagre and insufficient, that we may well hesitate as we enter upon the confines of that

> "Dark,
> Illimitable ocean, without bound,
> Without dimension, where length, breadth and height,
> And time and place are lost."

Through all the ages man has been grappling with the unknown and the infinite, and striving in a thousand ways to transcend the inexorable limits of finite intelligence. What is that inscrutable principle which we call MIND; which is akin to life, being never found without it, and yet is not life—which comprehends the universe in its grasp, and yet is not the universe—which makes destiny, and yet is not destiny—such is the great problem of our intellectual Cosmos which mankind have vainly sought to solve with their feeble

faculties. At this portal of the realm of mystery, speculative philosophy has been wearily knocking through all time for admission. There she has remained, summoning to her aid legions of followers from the wise and good of earth, they toiling, struggling, ever-hoping, all unconscious of having reached the Calpe and Abyla of mental exploration. And so the army of besiegers has steadily increased with the centuries—Aristotelians from the Lyceum, Platonists from the Academy, Cynics from the Cynosarges, Stoics from the Porch, and Epicureans from the Garden—all these meeting with Spinoza, and Hobbes, and Berkeley, and Locke, and Kant, and Comte, in one great army of embattling sages. But still the gate stands firm, unmoved, unshaken, as on that morn when light first sprung from chaos and ancient night. And the self-eluding *ego* which baffled antiquity has not surrendered its mystic *ens* to the more enlightened Positivism of modern times. Real progress in mental philosophy dates only from that time when mysticism and ontology gave way to an inquiry into the laws regulating the sensible operations of the mind. Passing by the *noumena* of intellection, and confining themselves exclusively to the *phai-noumena*, mankind have now learned to read lessons in psychology where formerly they knew not so much as its alphabet. They have attained unto wisdom by ceasing to inquire what the mind *is*, or where it is located, and by turning instead to study how it acts, and how it is acted upon. In fact they have learned wisdom by learning to confine their efforts and to limit their explorations within the realities and not the probabilities of mental operation.

And it is with the realities and not the probabilities of mental operation that the law is concerned. It is of man as naturally a rational being, and only exceptionally insane, that the law takes cognizance. Because also of

the difficulties which surround the application of principles of law to the regulation of the civil or criminal status of the insane, there has arisen a professional syncretism between law and medicine in the creation of this science of medical jurisprudence, whose most trying and tedious explorations are in the misty realm of mental alienation. There, law alone could scarce support herself by rubrics of logical deduction. And there, medicine alone could do no more than apply her gauge of health to manifestations of human conduct. Therefore is their union needed to say what the legal effects of certain physical facts shall be to the individual manifesting them and to the community at large. The cognation of the two sciences is in these essentials perfect; and their united application in cases of alleged insanity gives to jurisprudence the highest measure of moral certainty and justice which it is possible to secure.

With the mind in a normal state medical jurisprudence does not necessarily concern itself. The law needs no assistance there, nor are the resources of medicine invoked. But when disorder and discordance occur in its operations; when the equilibrium of a just balance between its faculties is so greatly and permanently disturbed as to announce an entire change in the habits of thought, feeling, conversation and conduct of the individual—when, comparing his present condition with that of previous months or years, we find him entirely unlike his former self, then it is that law interposes her equitable arm to protect him against the consequences of his own acts, or to shield society from the dangers of his unrestrained impulses. Such parties are considered as under civil disability, for where there is either absence or suspension or perversion of the reasoning faculty, there can be no legal assent of the mind to the obligation of a contract, or to the terms of a will,

nor does any criminal responsibility attach for offences committed. The insane are, as before the law, *civilly* dead.

Here, then, we come upon an exceptional class of citizens who, without being criminal, are yet, and of necessity, in custody and under some form of guardianship. They are said to be of unsound mind, or as the law more aptly describes them, *non compos mentis;* still it is not the mind, so much as its manifestations, which are disordered. It is a want of proportion and harmony between its faculties which occasions mental discord. A broken or exaggerated relation lying somewhere between the *noumena* and *phainoumena*, and giving rise to an *epiphainoumena*, in other words, an idea represented to the mind by a distorted or delusional symbol or image. Yet the mind itself must always be considered unitary in principle, one and indivisible, and although stripped of every faculty, capable of manifesting itself to our senses, cannot on that account be conceived as extinguished. Its avenues of communication with other minds may be closed by death or disorder, but that of itself does not prove its extinction. It may leave the body in which it has sojourned, when death assails the latter, and may and does in fact escape from the fetters of earthly union; but who believes that it dies, or suspends its activity from these causes? Who believes that it does not continue an individual and distinguishable mind throughout all eternity?

But aside from these dogmas of Christian belief, we must consider the mind in its relation to an organ, the brain, without which in a finite state we never find it existing. The brain, physically speaking, is the organ of the mind—the instrument through which, in human beings, the mind expresses its existence. And the chief glory of this organ is its endowment with a faculty

(*animal-sentient*) which no other created organ shares. Receiving a material impression, it returns a sentient impression, thus developing from a physical stimulus entering through the senses, an intellectual perception and apprehension. From this indissoluble connection of mind with matter, we perceive that there is a bond of sympathy between them, which more particularly reveals its presence in times of bodily suffering. Whenever the body is racked with pain, the mind concentrates its sympathy upon this condition, and refuses to be diverted from it. And when the degree of pain or of febrile excitement is exalted to its highest stretch, the mind often becomes so exquisitely sympathetic as to act irrationally—in other words, delirium sets in, for, in the language of Lear,

> "We are not ourselves
> When Nature being oppressed, *commands the mind*
> *To suffer with the body*,"

or, as Lucretius also expresses it:

> "Quin etiam morbeis in corporis avius errat
> Sæpe animus; dementit enim, deliraque fatur."
> —*Lib.* 3, 464.

From these premises we deduce two necessary conclusions, viz.: First, that *the dualism of mind and matter renders them mutually influential;* and Second, that disorder of either organism cannot long continue without affecting the equilibrium and health of the other. From these data we must conclude that mental unsoundness is not so much a disease of principle as it is a disease of relation—of relation between the functions of the mind themselves, and of relation between the functions of the mind and those of the body. Its seat is therefore in

the collective personality of our duplex nature.* Granting this to be true, we are at liberty to take sides neither with the *somatists*, nor the extreme *psychologists*, but avoiding both in the search for a golden mean, we can safely rest our conclusions only upon the doctrines of an *intermediate* theory, (*in medio tutissimus ibis.*) This appears to be the only true and orthodox rationale which the calm, deliberate judgment of the present day adopts in explanation of mental unsoundness.

It would not be difficult to show that insanity, as a form of disease, was recognized in the earliest days of the medical art; nor that it excited, as it does now, the attention of philosophers, poets and legislators. Were I to yield to the temptation which here presents itself, of making an excursus into the fields of psychological literature, I could easily consume the space allotted me in selections and illustrations drawn from one of the richest and most captivating store-houses of history. It must suffice in an article like this, and when only the philosophy of a science is to be discussed, to mention a few names, in order to recall to the minds of classical scholars the characters of insanity which they represent. The feigned madness of Ulysses, which Palamedes discovered; that of Ajax, who mistook a flock of sheep for the sons of Atreus; that of Orestes, pursued by Furies; or that of the heaven-inspired Cassandra, all show that the old poets well understood the physiognomy of insanity. In the field of hallucinations, in particular, the student will find everything that the most ardent imagination could desire, all in fact that novelists, poets and metaphysicians seek for in the mys-

*Feuchsterleben, Med. Psych.: §123; Brodie, Psych. Inq.: London, 1854; Falret, Leçons Clin. sur l'Alien: Ment. Lec. 1, p. 8, Paris, 1854.

tical and inscrutable essence of our emotions.* And he will there learn how the epidemic religious lunacies which swept over Europe during the middle ages—the Pastoureaux,† the Flagellants, the Bianchi, the ecstatics of the Cevennes, or more lately the *Vampyrism* of Hungary, Moravia, or Lorrain, and the *Mommiers* of Switzerland—all arose out of an expansion of those mystic ideas, which, among the ignorant and uneducated, are ever struggling to crystallize themselves into forms of religious ceremonial. And, among the aberrations of great intellects, ever treading on the confines of insanity, if we may credit the philosopher of Stagira—that, *nullum magnum ingenium sine mixtura dementiæ*, or, as Dryden has gracefully paraphrased it,

> "Great wit to madness nearly is allied,
> And thin partitions do their bounds divide."

Among these infirmities of genius, the inquirer will find himself well rewarded by studying the Demon of Socrates,‡ the Amulet of Pascal, the imaginary chorus of Paracelsus, the contests of Luther with Satan, the visions of Mahomet, Swedenborg and Benvenuto Cellini; all exemplifying true manifestations of that *hallucinatio studiosa* which is born of an over active

*Brierre de Boismont Des Hallucinations, &c. Paris: 1852; Eusibe Salverto "Des Sciences Occultes," &c. Paris: 1856.

†Hallam's Middle Ages, p. 464; Du Cange, *Pastorielli et Verberatio.*

Vid. Horat. Epist.: Lib 2, 2, 128, for a most beautiful description of a hallucination.

‡On this very interesting question, which has exercised the educated mind of the world for centuries, vid. Xenophon's *Memorabilia*, Plato's *Apology*, *Banquet*,&c., Plutarch on the Demon of Socrates, and a review of these in a recent work entitled, "Du Demon de Socrate," par L. F. Lelut: Paris, 1856.

and heat-oppressed brain. But, for the most life-like delineations of insanity in any language, we must turn to Shakspeare, whose psychology is as perfect in all respects, as though it had been written by one who had made insanity the study of his life-time. Surely, no master of the human passions has soared nearer the sun than he, and none so deftly limned, in all the variety of their manifold aspects, the sad aberrations of the distempered intellect. Whoever has thoroughly possessed himself of those master-pieces of dramatic excellence that form the characters of Hamlet, Ophelia, Lear, Macbeth, Timon of Athens, or the melancholy Jaques, has taken a deeper lesson in the mysterious features of mental disorder, than all text books, or reports of insane asylums can impart to him.

As a disorder overpowering the will and deranging the manifestations of the mind in its postulate perceptions, insanity has been well known and equally well described in all ages. And its disqualifying effects upon its victims, in all acts involving a civil or criminal responsibility, has ever been recognized in the jurisprudence of civilized nations. The laws of the twelve tables made provision for the guardianship of *lunatics* and *prodigals*, and the enactment was repeated in the Institutes of Justinian.* The law of England and of our country has always regarded with peculiar and tender solicitude, persons laboring under mental unsoundness. Hence, their *contracts* and *wills* are always deemed voidable, according to the degree of incapacity of their understanding, and their actions entail no criminal responsibility, whenever it can be shown that the mind was not capable of judging of the true nature of the act committed. This question of the degree of in-

*Table V. *Si Furiosus est*, &c; Inst. lib. 1, Tit. 13, 26; Horat. Sat.: lib. 2, 3, 214.

capacity of the understanding, has given rise to much discussion in courts. It has divided opinions upon the subject of mental unsoundness into two classes, and driven either side to extreme views. There are those who, planting themselves upon the unitary and indivisible character of the mind, assert that there are no degrees in insanity, consequently no *monomanias*, and no partial insanity. With them it is total insanity or none at all. Others again believe that monomanias can exist as accompaniments to minds otherwise healthy, so far as human art can detect; and except one particular illusion, producing aberration of the judgement with reference to itself, competent to reason correctly upon all other subjects. If this be admitted, then we hazard nothing in asserting that in many instances monomania cannot be distinguished from exaggerated eccentricity, and may therefore be mistaken for a disease, when it is in fact only the natural habit of mind; as we say of one man that he has a poetical mind, and of another a mathematical mind, both being *eccentric* and diametrically opposite, yet neither state arguing insanity *a priori*. It is this extreme difficulty of determining what amount of individual dissimilarity any person shall be allowed to exhibit in his opinions and conduct, as against a certain arbitrary and conventional standard, having only a local or temporary character; it is this difficulty of determining how far a man has a right to be himself, without incurring the imputation of being insane; which renders the doctrine of monomania so illogical. For, in its strictest application, it is sufficient for any one to be unfashionable in garb, demeanor or opinions, to be at once decreed insane; and the only standard of mental health recognized therefore would be one never originally created, viz.: entire uniformity in all things between all men.

This doctrine of partial insanity it has been the province of medical jurisprudence to interpret to courts in such a way as to convince them of its fallacious character. And while American courts are still said to admit its existence *eo nomine*, they certainly have not in their rulings treated it as a form of true mental unsoundness. All their decisions, whenever this point has been mooted, have glazed over the significant principle that the law cannot concern itself with *degrees* of insanity, to say instead, that, wherever the subject matter of the transaction, be it contract or will, is not infected with insanity, the act, even of one alleged to be partially insane is only voidable, and not *ab initio* void.* In England this was also the rule repeated and reaffirmed in all those decisions which have immortalized the name of Sir John Nicoll, nor was it ever questioned until the year 1848, when Lord Brougham, in a case before the Privy Council, ruled that it was erroneous to suppose that a mind established to be partially insane, could be really sound upon any subject, and therefore competent to make a will. This decision was the first introduction of a purely medical and psychological dogma into the elements of a legal judgement, and while abstractly correct, has not yet secured general recognition in our courts. Nor is this surprising, since under this ruling great hardships might occur, and great wrong be done in the sacred name of Justice. For, were Lord Brougham's

* "Courts in passing upon the validity of a will do not measure the extent of the understanding of the testator, if he be not totally deprived of reason; whether he be wise or unwise, he is the lawful disposer of his property, and, his will stands as a reason for his actions. A man's capacity may be perfect to dispose of property *by will*, yet inadequate for the management of other business, as for instance to make contracts for the purchase and sale of property."—*Stewart's Exrs. vs. Lispenard*, 26 *Wend.* 255, and reaffirmed in *Blanchard vs. Nestle*, 3 *Denio*, 37.

dictum* strictly applied, and assuming delusion and insanity to be convertible terms, any individual occasionally visited by a hallucination, which Donne describes as "eclipses, sudden offuscations and darkenings of the senses"—such in fact as visited Luther, Swedenborg, Pascal, Dr. Johnson, &c.,—would be deemed incompetent to perform any valid testamentary, or other legal acts. According to this view, hundreds of minds competent to transact business would be denied the right of finally disposing of their estates.

It must be evident to all that if we could extricate ourselves from the confusion of terms, and rightly understand the true import of the term insanity as necessary to be recognized at law, we should not disagree practically, upon that to which, theoretically, we can all subscribe. We must know at the outset whether we use the term abstractly and absolutely, or relatively to some particular transaction. Speaking abstractly of any two opposite qualities, like health and disease, it is unquestionably true that both these conditions cannot coexist with reference to time and subject. They mutually exclude each other in one of these particulars. Thus, and as an abstract moral proposition, we are either good or not good, and if not good, then bad. And, speaking psychologically, we are either sane or insane, if not the one we must be the other. And yet it is also true that *apparently* we may be both sane and insane at the same time in relation to different subjects,

* "We are wrong in speaking of partial unsoundness, we are less incorrect in speaking of occasional unsoundness; we should say that unsoundness always exists, but it requires a reference to the peculiar topic, else it lurks and appears not. But the malady is there, and as the mind is one and the same, it is really diseased, while apparently sound, and really its acts, whatever appearance they may put on, are only the acts of a morbid or unsound mind." —*Waring vs. Waring*, 6 *Moore, P. C. Cases*, 349.

as we may be truly sane, and again insane at different times on the same subject. According to Sir John Nicoll,* this principle was long ago recognized by the law of England, and formed the foundation of all adjudications in cases of partial insanity. Nor can its correctness be doubted. The history of religious lunacy abundantly proves that the followers of fanatics and enthusiasts, during their continuance in the bonds of delusion are, none other than insane, while in other respects *apparently* sane; and when recovered from their delusion will it be pretended that they can never afterwards entertain sound religious views? Will it be asserted that a Thug or a Parsee when he casts off the slough of his old creed can never become a Christian? Or shall every Millerite and Mormon be deemed incompetent to make a will or a contract, though in other matters sane enough? These are the ends to which abstract and absolute constructions of principles would lead us. But neither law nor medicine deal in abstract propositions. The science of numbers can avail them nothing in determining the laws of our physical or moral nature. For Justice in her inquests upon human conduct considers the individual *relatively*, and under the light of moral evidence. In weighing his civil or criminal responsibility, it weighs all his surroundings, his age, his infirmities of body and of mind, the influences to which he has been subjected, together with the motives for acts. In none of these things does it prejudge him, but on the contrary exacts evidence in support of them all. Therefore, and regarding the majority of men as sane it presumes them to be so until the contrary appears. And whenever alleged insanity occurs, its effect is required to be shown before the individual shall be deprived of his civil rights; since no

*Dew *vs.* Clark, 1 Addams, 279.

presumption of insanity follows from proof only of great eccentricity, and even in what is called partial insanity, before courts, an individual has rights of which the law will not wantonly deprive him;* and contrariwise, incurs responsibilities both civil and criminal, from which he cannot escape.†

But the greatest difficulty encountered by medical jurists in the field of their labors before courts, has been in the department of criminal law. As the philosophy of forensic medicine rests upon the necessitated aid of Medicine to Law in questions of human responsibility, so it has had, as a dual science, to contend, in a measure with both of its parents; at times taking sides against one, and subsequently against the other. The French school of psychologists founded by Pinel, has the merit of advancing the knowledge of insanity to a degree not previously possessed; and of ameliorating the treatment of its victims so as to secure the greatest possible benefit from rational medicine, if an increased number of recoveries be any test of successful therapeutics. But that school also introduced an apple of discord into the forum of juridical medicine, which, while it has immortalized its name, will yet be looked upon in each passing year as the most dangerous error and specious stumbling block ever placed in the pathway of justice. In fact it is the most remarkable illustration of how far the reverence for a name can silence criticism, and how easily even the logistics of jurisprudence may be made to contradict themselves, by courts too readily accepting dogmatic assertions for positive conclusions. It is hardly necessary to say that we allude to the doctrine of *moral* insanity. If we examine the physiognomy of this

*Stewart's Exrs. *vs.* Lispenard, 26 Wend. R., 255.

†Commonwealth *vs.* Rogers, 7 Metc., 500.

psychological sphinx and read its character in the words of one of high authority, we shall only wonder the more that any court should ever have allowed it to be discussed as a possible entity within its walls. In these cases, says Dr. Winslow, "the person manifests no mental delusion; is not monomaniacal; has no hallucination; does not confound fancies with realities; but simply labors under a morbid state of the feelings and affections, or, in other words, a diseased volition."* But this last sentence is hardly finished: it should have terminated with the proper inference to be drawn from this critical description, in the only words applicable to the case, viz.: *and is not insane.* Of course not. Why should any man who so nearly resembles the majority of mankind as to be practically undistinguishable from them—why should this man *in particular* be called *morally insane?* Are not all Adam's offspring more or less morally insane? Where's the perfectly healthy moral nature among us? Judged by so elastic a system as this, why bring the plea up in behalf of the prisoner, when it is just as easy to accuse the Court itself of insanity, and demur at once to its jurisdiction? The description of a moral lunatic given above might suit the judge, the jury, the district attorney, the witnesses; any one in fact whom we may please to consider as having acted from irresistible impulse, and without rational motives. The door being once opened to such a plea as this, all human responsibility ceases—Satan himself becomes converted into a simple moral lunatic, and vice, like its father, appeals to our tenderest pity. Vice in fact ceases, or by substitution of names and perversion of principles passes into a disease and a misfortune.

But why use the term *moral* at all, in speaking of insanity? Insanity by itself is a sufficiently expressive

* Plea of Insanity, p. 43.

term, and if any one be insane, he is none the more so for being *morally* insane. If the adjective were simply superfluous in this connection, no harm would ensue from its use; but it is precisely because the term is meant to express a state of mind of which there is no collateral nor even direct symptomatic evidence, that its introduction into criminal jurisprudence has been so strongly opposed. Nor can this be matter of surprise to those who recognize the binding obligation upon courts of the principle underlying the well-known maxim, *De non apparentibus et non existentibus eadem est ratio.* In pure consistency with this key-stone in the arch of all legal evidence, no tribunal can otherwise rule than that the plea of *moral* insanity, as based upon the description of a state of mind in which all the ordinary symptoms of insanity are absent, is an illogical and fallacious one, self-contradictory, and containing its own best refutation. The first part of the plea admits that the person exhibits no evidence of intellectual derangement—no insanity in fact—while the second part raises a special traverse to this, by denying that the ordinary conclusion of such a premise should follow, and asserting instead, that, granting all the foregoing disproof of insanity, the person should still be considered insane, not in the common, ordinary way, belonging to vulgar, *organic* causes, but through some metaphysical disturbing force which acts alone upon the *will and the affections.* We admit that the doctrine is exceedingly erudite, so recondite in fact as to find no legitimate place within the pale of so pragmatic a science as Jurisprudence. Like the doctrines of *con and transsubstantiation*, the dogmas of homoiousian or hypostatic believers, or problems relating to the future state of disembodied spirits, it is a doctrine more suitable for a senate of theologians than a jury of laymen. It belongs

to the middle age—the metaphysical period, as M. Comte would style it—of Forensic Medicine, but is fast giving way to that inevitable positivism, which, in the history of mental progress, always marks the attainment of a broad table-land of truth, and the building of the last, permanent foundations of any science.

It would be well, therefore, if the term *moral* insanity, which at law is only an *ignis fatuus* leading us into bye-paths and labyrinths of confusion, could be interdicted in our courts. And yet it is probable that we shall not immediately be able to shake off the bonds of this captivating designation, inasmuch as there are rulings upon it which turn precisely on the distinction between moral and intellectual operations in the mind. "Shadowy, fluctuating and indefinable" as is the boundary between these two mysterious realms, Law has still been compelled to search it out; and although she has walked onwards, groping her way through the dark, like Virgil's hero exploring the way through Hades,

> "Quale per incertam Lunam sub luce maligna
> Est iter in sylvis,"

in vain endeavors to find the coveted line, she has only returned disheartened to plant herself upon the dogma that "moral insanity is always preceded by an efficient cause of mental disease," and that, where no organic changes or delusions of the intellect are present, it is impossible to distinguish it from vicious propensities.*

In its slighter manifestations, therefore, it is emphatically an enigma, a sphinx, which even the most expert medical Œdipus cannot always unravel; and until radically established in the moral system, it hovers long on the confines of disease and depravity. Hence,

* Bucknill and Tuke Psychological Med., p. 328.

the law heretofore, without absolutely rejecting this doctrine of disease, has received it with caution and hesitation, because its boundaries are so indefinite, and its application in practice is open to such irregularities and contradictions of construction, that no rule of action can be framed upon it. It is in fact the true legal chaos;

"Non bene junctarum discordia semina rerum."

The part which must thus be taken by forensic medicine against moral insanity will prove in its consequences of lasting benefit to the administration of criminal justice. This is a duty it owes to both sciences of law and medicine, for in its bosom alone can an union occur between them, and that union will always remain impossible, so long as a purely metaphysical dogma, espoused by medicine as a canonical principle in its interpretation of insanity to courts—is attempted to be forcibly and illogically introduced into the adminstration of justice. The reasons for this antagonism to the doctrines of Pinel we have already shown, nor do we think its warmest advocates can fail to admit that it is daily losing ground in the scientific world. There must be some good cause for this. Prejudice alone was never sufficient to dethrone a principle of truth once crowned in the temple of science. For the recoil of a truth momentarily oppressed, invariably carries it beyond the reach of future cavil. Such has not been the case with moral insanity. Slowly receding before the increasing lights and logic of medicine, it is fast surrendering the field usurped by it, nor can that day be far distant which shall see it entombed among the errors of the past.

One great duty yet remains to the medical jurist in questions of insanity before courts; the greatest and

most difficult perhaps of any undertaken by him, and one too, whose proportional advantages to the administration of justice, can be measured only by the multitude of human relations in which it presents itself. We mean the duty of expounding to courts the utter fallacy of making the knowledge of right and wrong a test either of sanity, or the foundation of human responsibility. It is Pascal who wisely says that morality is often but a question of latitude, so that what is right on one side of the Pyrenees is wrong on the other. And every age and country will bear witness to the fact that right and wrong are questions of feeling as well as of reason, and regarded by men variously, in the abstract, no less than in the concrete. Individually, too, the innate sense of justice which moralists assert dwells in every one, is always subordinated to laws of temperament, disease, or influences of education. The knowledge or conviction of right and wrong is separate from other pure mental states, with which it may or may not sympathize and suffer. Hence, it is not necessarily, nor wholly destroyed in insanity. And its presence should not be taken as evidence against the existence of such a state; for it may coexist with the most perfect delusion. The bridge which unites the abstract to the concrete may be broken in some part, and the mind which knows right from wrong in the universal sense, may not be able to trace or follow its application out, in a particular instance. This is the quicksand in which courts are too apt to bury themselves, concluding that if a man knows right at all, he knows and feels its binding obligation in every particular instance, and the same may be said of wrong. Whereas, in fact a case of insanity seldom exists in which there is not such knowledge, and where too, (as always appears most incongruous to a layman,) reason is not found in juxtaposition with unreason;

precisely as a man with a broken leg has some power of motion still, although the fulcrum upon which the muscles exert themselves is wholly impaired; in other words the muscles may act independently of the bone, but in such case they act at random. The knowledge of right and wrong as either a direct or a collateral standard of mental health, and consequent responsibility before the law, must be abandoned. It is of no more value in fact, than the knowledge of one's own personality, and few indeed among the thousands of lunatics who fill our asylums, do not possess that. It is a sign of little value in any case, and has, unfortunately for the cause of justice, always been unduly magnified in importance. Let us learn wisdom with the passing years. The province of a true philosophy is to point out the errors which, descending to us under the majestic cloak of precedent, still fetter our judgments, by first blinding our eyes. We must criticise, then, whatever commands our obedience, in order to ascertain whether it be justly authorized to do so. If its title to prerogative authority be good, it will court, rather than shun a rigid scrutiny; but if on the other hand its title be usurped, the sooner the fact is exposed, and the fallacy exploded, the better. This is the grand and solemn duty which is assigned to medical jurisprudence, a duty only to be discharged successfully by the concurrent action of law and medicine. From this imperfect panorama, it will be seen, that there are grave responsibilities resting upon both professions in their disposition of the divided empire of insanity. There are mutual obligations to assist—not to resist—each other's progress here; nor, because their paths are not always parallel, need they greatly diverge. There are mutual concessions to be made, which derogate in nothing from the dignity or the merits of professional legends. There are concessions to be made to

medicine—that Divine art than which, says Tully, none brings men unto a nearer resemblance to the gods, because she holds the vantage-ground of physical exploration—because she bears the only torch that can light us in our way through the misty realms of disease, and thus lends the opulence of her experience to the task of nicely adjusting the measure of our mental capacity. Bravely and sincerely have her ministers labored in this field of mystery; zealously and disinterestedly have they sought to bring a higher measure of light, and a truer interpretation of the results of mental infirmity, into the deliberations of the Forum.

> "And for the testimony of truth, have borne
> Universal reproach, far worse to bear
> Than violence; for this was all their care,
> To stand approved in sight of God, though worlds
> Judged them perverse."

And there are concessions to be made to the majesty of law, to whom "all things in heaven and earth do homage;" and to whom also by right of primogeniture, belongs the government of man in society. It is to her, the only bulwark against "the desolating flood of wild misrule," that we owe our liberties, our social security, peace, progress and prosperity. It is to her, the calm impassive goddess whose shrine is *reason*, and whose temple, "orbed in a rainbow" of truth and justice, is closed against no suppliant, however weak, that we look for the secure enjoyment of all those temporal blessings which spring from industry and thrift. 'Tis wise, then, that her jealous conservatism sanctions no sudden or wide departure from well-tried experience, but while drawing to herself the lights of kindred learning determines the extent to which she will employ them. For the safety of all jurisprudence depends upon an enlightened and moral judiciary; one

"Whose blood and judgment are so well commingled,
That they are not a pipe for fortune's finger,
To sound what stop she please."

But fortunately there is a middle ground, equidistant from all ultraisms and citraisms, where both professions can meet and join hands in their final judgment upon this branch of municipal law. This ground is already well marked out in the recorded decisions of our courts and those of England; there is no reason why, for the present at least, it should be altered. There may indeed be occasional differences of opinion as to whether some enlargement of this ground should, or not, be made so as to include an extraordinary and exceptional case. Instances may occasionally happen where a mistaken zeal or humanity, seeks to force established opinion beyond the limits of rational, moral evidences; and not succeeding in this, professional pride is wounded and writhes under defeat. But these are only differences of individual opinion, and should carry no weight as against the sodality of law and medicine. Instead of leaving rankling memories behind them, they should be like Hooker's anger, only "the momentary bead upon a phial of pure water, instantly subsiding without sediment or soil."